

LEGISLATURE OF THE STATE OF IDAHO
Sixty-first Legislature First Regular Session - 2011

IN THE SENATE

SENATE BILL NO. 1132

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO THE IDAHO TORT CLAIMS ACT; AMENDING SECTION 6-903, IDAHO CODE, TO PROVIDE THAT A CERTAIN BOARD AND ITS MEMBER DISTRICTS SHALL BE CONSIDERED A SINGLE GOVERNMENTAL UNIT AND CERTAIN CLAIMS MAY BE BROUGHT AND PURSUED ONLY AGAINST THE OPERATING UNIT AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 6-926, IDAHO CODE, TO PROVIDE FOR THE COMBINED AGGREGATE LIMIT OF LIABILITY FOR A CERTAIN OPERATING AGENCY, ITS MEMBER IRRIGATION DISTRICTS AND THEIR RESPECTIVE EMPLOYEES AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 6-903, Idaho Code, be, and the same is hereby amended to read as follows:

6-903. LIABILITY OF GOVERNMENTAL ENTITIES -- DEFENSE OF EMPLOYEES. (a) Except as otherwise provided in this act, every governmental entity is subject to liability for money damages arising out of its negligent or otherwise wrongful acts or omissions and those of its employees acting within the course and scope of their employment or duties, whether arising out of a governmental or proprietary function, where the governmental entity if a private person or entity would be liable for money damages under the laws of the state of Idaho, provided that the governmental entity is subject to liability only for the pro rata share of the total damages awarded in favor of a claimant which is attributable to the negligent or otherwise wrongful acts or omissions of the governmental entity or its employees. When the claim for damages arises from construction, operation or maintenance of an impoundment, canal, lateral, drain or associated facilities that are under the supervision or control of the operating agency of irrigation districts whose board consists of directors of its member districts, then such board and its member districts shall be considered a single governmental unit and the claim may be brought and pursued only against the operating unit.

(b) (i) A governmental entity shall provide a defense to its employee, including a defense and indemnification against any claims brought against the employee in the employee's individual capacity when the claims are related to the course and scope of employment, and be responsible for the payment of any judgment on any claim or civil lawsuit against an employee for money damages arising out of any act or omission within the course and scope of his employment; provided that the governmental entity and its employee shall be subject to liability only for the pro rata share of the total damages awarded in favor of a claimant which is attributable to the act or omission of the employee; (ii) provided further, that to the extent there is valid and collectible, applicable insurance or any other right to defense or indemnification legally available to and for the protection of an employee, while operating or using an automobile, aircraft or other vehicle not owned

or leased by the governmental entity and while acting within the course and scope of his/her employment or duties, the governmental entity's duty hereunder to indemnify the employee and/or defend any such claim or lawsuit arising out of the operation or use of such personal automobile, aircraft or vehicle, shall be secondary to the obligation of the insurer or indemnitor of such automobile, aircraft or vehicle, whose obligation shall be primary; and (iii) provided further, this ~~paragraph~~ subsection shall not be construed to alter or relieve any such indemnitor or insurer of any legal obligation to such employee or to any governmental entity vicariously liable on account of or legally responsible for damages due to the allegedly wrongful error, omissions, conduct, act or deed of such employee.

(e3) The defense of its employee by the governmental entity shall be undertaken whether the claim and civil lawsuit is brought in Idaho district court under Idaho law or is brought in a United States court under federal law. The governmental entity may refuse a defense or disavow and refuse to pay any judgment for its employee if it is determined that the act or omission of the employee was not within the course and scope of his employment or included malice or criminal intent.

(d4) A governmental entity shall not be entitled to contribution or indemnification, or reimbursement for legal fees and expenses from its employee unless a court shall find that the act or omission of the employee was outside the course and scope of his employment or included malice or criminal intent. Any action by a governmental entity against its employee and any action by an employee against the governmental entity for contribution, indemnification, or necessary legal fees and expenses shall be tried to the court in the same civil lawsuit brought on the claim against the governmental entity or its employee.

(e5) For the purposes of this act and not otherwise, it shall be a rebuttable presumption that any act or omission of an employee within the time and at the place of his employment is within the course and scope of his employment and without malice or criminal intent.

(f6) Nothing in this act shall enlarge or otherwise adversely affect the liability of an employee or a governmental entity. Any immunity or other bar to a civil lawsuit under Idaho or federal law shall remain in effect. The fact that a governmental entity may relieve an employee from all necessary legal fees and expenses and any judgment arising from the civil lawsuit shall not under any circumstances be communicated to the trier of fact in the civil lawsuit.

(g7) When a claim asserted against an employee in the employee's individual capacity is dismissed by the court, the dismissed party shall have the right to a hearing pursuant to the provisions of section 12-123, Idaho Code.

SECTION 2. That Section 6-926, Idaho Code, be, and the same is hereby amended to read as follows:

6-926. JUDGMENT OR CLAIMS IN EXCESS OF COMPREHENSIVE LIABILITY PLAN -- REDUCTION BY COURT -- LIMITS OF LIABILITY. (1) The combined, aggregate liability of a governmental entity and its employees for damages, costs and attorney's fees under this chapter, on account of bodily or personal injury, death, or property damage, or other loss as the result of any one (1) occurrence or accident regardless of the number of persons injured or the number

of claimants, shall not exceed and is limited to five hundred thousand dollars (\$500,000), unless the governmental entity has purchased applicable, valid, collectible liability insurance coverage in excess of said limit, in which event the controlling limit shall be the remaining available proceeds of such insurance. For claims arising from construction, operation or maintenance of impoundments, canals, laterals, drains or associated facilities that are under the supervision or control of the operating agency of irrigation districts whose board consists of directors of its member districts, the combined aggregate limit of liability for the operating agency, its member irrigation districts and their respective employees shall be the combined aggregate limit of a single governmental entity under this section. If any judgment or judgments, including costs and attorney's fees that may be awarded, are returned or entered, and in the aggregate total more than five hundred thousand dollars (\$500,000), or the limits provided by said valid, collectible liability insurance, if any, whether in one (1) or more cases, the court shall reduce the amount of the award or awards, verdict or verdicts, or judgment or judgments in any case or cases within its jurisdiction so as to reduce said aggregate loss to said applicable statutory limit or to the limit or limits provided by said valid, collectible insurance, if any, whichever ~~was~~ is greater.

(2) Limits of liability above specified in this section shall not be increased or altered by the fact that a decedent, on account of whose death a wrongful death claim is asserted hereunder, left surviving him or her more than one (1) person entitled to make claim therefor, nor shall the aggregate recovery exceed the single limit provided for injury or death to any one (1) person in those cases in which there is both an injury claim and a death claim arising out of the injury to one (1) person, the intent of this section being to limit such liabilities and recoveries in the aggregate to one (1) limit only.

(3) The entire exposure of the entity and its employee or employees hereunder shall not be enlarged by the number of liable employees or the theory of concurrent or consecutive torts or tortfeasors or of a sequence of accidents or incidents if the injury or injuries or their consequences stem from one (1) occurrence or accident.

(4) In no case shall any court enter judgment, or allow any judgment to stand, which results in the limit of liability ~~herein~~ provided in this section to be exceeded in any manner or respect. If any court has jurisdiction of two (2) or more such claims in litigation in which the adjudication is simultaneous and, in the aggregate, exceeds the limits ~~above~~ provided in this section, the reduction shall be pro rata in a proportion consistent with the relative amounts of loss of the claimants before the court; otherwise, the reduction shall be determined and made in view of limits remaining after the prior settlement of any other such claims or the prior satisfaction of any other such judgments, and no consideration shall be given to other such outstanding claims, if any, which have not been settled or satisfied prior thereto.

(5) The court shall reduce any judgment in excess of the limits provided by this act in any matter within its jurisdiction, whether by reason of the adjudication in said proceedings alone or of the total or aggregate of all

- 1 such awards, judgments, settlements, voluntary payments or other such loss
2 relevant to the limits ~~above~~ provided in this section.